

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Transfer of Inbound Letter Post Small
Packets to the Competitive Product List

Docket No. MC2019-17

Competitive Product Prices
Inbound E-Format Letter Post

Docket No. CP2019-155

ORDER GRANTING POSTAL SERVICE'S MOTION AND APPROVING PRICES FOR
INBOUND LETTER POST SMALL PACKETS AND BULKY LETTERS

(Issued December 19, 2019)

I. INTRODUCTION

On November 20, 2019, the Postal Service filed a motion to request the transfer of Inbound Letter Post Small Packets and Bulky Letters to the Competitive product list effective January 1, 2020.¹ With its Motion, the Postal Service filed proposed prices for the Inbound Letter Post Small Packets and Bulky Letters product that would become effective on January 1, 2020. Motion at 4. The Postal Service also proposed specific

¹ Docket No. MC2019-17, Motion of the United States Postal Service to Effectuate Transfer on January 1, 2020, and Application for Non-Public Treatment, November 20, 2019, at 1 (Motion).

per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters to be effective on July 1, 2020.² For the reasons given below, the Commission approves the January 1, 2020 and July 1, 2020 proposed prices for Inbound Letter Post Small Packets and Bulky Letters. In addition, the Commission grants the Postal Service's Motion and approves the addition of the Inbound Letter Post Small Packets and Bulky Letters product to the Competitive product list and the Inbound Competitive International Registered Mail price category to the Competitive International Registered Mail service, effective January 1, 2020.

II. BACKGROUND

Universal Postal Union (UPU) member countries negotiated default prices, called terminal dues, for the acceptance, processing, and delivery of Inbound Letter Post small packets and bulky letters at the 2016 UPU Congress.³ The Commission expressed repeated concerns related to the UPU terminal dues system and noted that the current pricing regime results in noncompensatory terminal dues.⁴ Additionally, recent Annual

² *Id.* at 3. See generally Docket No. CP2019-155, Notice of the United States Postal Service of Effective Date and Specific Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, October 29, 2019 (October Notice).

³ See Universal Postal Convention, Articles 28-30 (adopted by the 2016 Universal Postal Union Congress), available at: http://www.upu.int/uploads/tx_sbdownloader/actsActsOfThe26ThCongressIstanbul2016En.pdf (UPU Convention).

⁴ Docket No. ACR2018, Annual Compliance Determination, April 12, 2019, at 84-85 (FY 2018 ACD); Docket No. ACR2017, Annual Compliance Determination, March 29, 2018, at 68 (FY 2017 ACD); Docket No. ACR2016, Annual Compliance Determination, March 28, 2016, at 66 (FY 2016 ACD); Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, at 70 (FY 2015 ACD); Docket No. ACR2014, Annual Compliance Determination, March 27, 2015, at 53; Docket No. ACR2013, Annual Compliance Determination, March 27, 2014, at 59; Docket No. ACR2012, Annual Compliance Determination, March 28, 2013, at 143; Docket No. ACR2011, Annual Compliance Determination, March 28, 2012, at 143-144; Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 130-131; Docket No. ACR2009, Annual Compliance Determination, March 29, 2010, at 108-109; Docket No. ACR2008, Annual Compliance Determination, March 30, 2009, at 81; Docket No. ACR2007, Annual Compliance Determination, March 27, 2008, at 115, 118.

Compliance Determination (ACD) reports describe UPU terminal dues as discriminatory because they are not equivalent to domestic postage rates in the destination country.⁵

On August 23, 2018, President Donald J. Trump issued a presidential memorandum to the Postmaster General and the Chairman of the Commission, among others, entitled “Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail.”⁶ The Presidential Memorandum notes that the current terminal dues system does not “align with United States economic and national security interests[.]” Presidential Memorandum § 2(c). Specifically, the Presidential Memorandum maintains that the current terminal dues system “distorts the flow of small packages around the world by incentivizing the shipping of goods from foreign countries that benefit from artificially low reimbursement rates.” *Id.* § 2(c)(i)(C). The Presidential Memorandum directed the Secretary of State to seek agreement to reform the UPU terminal dues system so that the prices are consistent with the policies outlined in the Presidential Memorandum. *Id.* § 4(b).

Following the Second UPU Extraordinary Congress in 2018, the Department of State reported that there was insufficient progress made to reform the terminal dues system in line with the policies outlined in the Presidential Memorandum.⁷ On October 17, 2018, the White House announced that the President concurred with the Department of State’s recommendation that the United States should adopt self-declared rates for terminal dues as soon as practical, but no later than January 1, 2020. *Id.* Also, on the same day, the Secretary of State notified the UPU that the

⁵ FY 2017 ACD at 68; FY 2016 ACD at 66; FY 2015 ACD at 70.

⁶ Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018, available at: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission/> (Presidential Memorandum).

⁷ Statement from the Press Secretary, October 17, 2018, available at: <http://www.whitehouse.gov/briefings-statements/statement-press-secretary-38/> (Press Secretary Statement).

United States would withdraw as a member country, effective one year from the announcement. *Id.* The White House announcement stated that the Department of State will seek to negotiate bilateral and multilateral agreements that resolve the problems identified in the Presidential Memorandum. *Id.* It noted that “[i]f negotiations are successful, the Administration is prepared to rescind the notice of withdrawal and remain in the UPU.” *Id.*

III. PROCEDURAL HISTORY

A. Transfer of Inbound Letter Post Small Packets and Bulky Letters

On November 16, 2018, the Postal Service filed a request seeking modification of the Market Dominant and Competitive product lists pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*⁸ The Request sought to: (1) remove Inbound Letter Post small packets and bulky letters from the market dominant Inbound Letter Post product, and associated inbound registered mail services from the market dominant product list; and (2) add identical services to the competitive product list. Request at 12-13. In the Request, the Postal Service proposed the addition of a new product to the Competitive product list called Inbound Letter Post Small Packets and Bulky Letters and a new category of Competitive International Registered Mail⁹ called Inbound Competitive International Registered Mail. *Id.* With the Request, the Postal Service filed proposed revisions to the Mail Classification Schedule (MCS), which contained these changes

⁸ Docket No. MC2019-17, United States Postal Service Request to Transfer Inbound Letter Post Small Packets and Bulky Letters, and Inbound Registered Service Associated with Such Items, to the Competitive Product List, November 16, 2018, at 1 (Request). The Postal Service filed a non-public library reference with its Request. Docket No. MC2019-17, Library Reference USPS-LR-MC2019-17/NP1, November 16, 2018; United States Postal Service Notice of Filing Nonpublic Library Reference USPS-LR-MC2019-17/NP1 and Application for Nonpublic Treatment, November 16, 2018.

⁹ The Request proposed revisions to the existing Outbound Competitive International Registered Mail component of the competitive International Ancillary Services product. Such revisions include changing the name of the component to Competitive International Registered Mail and adding the international registered mail services associated with Inbound Letter Post small packets and bulky letters as a new category called “Inbound Competitive International Registered Mail.” *Id.* Attachment B at 7-8.

along with related conforming changes. See *generally id.* However, the Postal Service did not propose prices for the affected mailpieces. See Request at 9.

In Order No. 4980, the Commission conditionally approved the transfer of Inbound Letter Post Small Packets and Bulky Letters items from the Market Dominant to Competitive product list.¹⁰ The Commission held that before Inbound Letter Post Small Packets and Bulky Letters may be added to the Competitive product list, the Postal Service must propose and the Commission must approve prices that satisfy 39 U.S.C. 3633(a) and 39 C.F.R. part 3015. Order No. 4980 at 19.

B. Prices for Inbound Letter Post Small Packets and Bulky Letters

On April 10, 2019, the UPU agreed to hold a postal ballot to determine whether it should convene an Extraordinary Congress on the UPU terminal dues system; specifically, terminal dues for Inbound Letter Post small packets and bulky letters.¹¹ UPU members voted in favor of holding an Extraordinary Congress and the Third Extraordinary Congress was scheduled for September 24-25, 2019, in Geneva, Switzerland.¹²

On May 20, 2019, the Postal Service filed notice of a proposed range of prices for the Inbound Letter Post Small Packets and Bulky Letters product and for associated Inbound Competitive International Registered Mail service.¹³ The Postal Service stated that the proposed range would allow the Postal Service to preserve flexibility, enabling it

¹⁰ Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019, at 18 (Order No. 4980).

¹¹ Press Release, UPU, UPU Member Countries Vote to Hold Geneva Extraordinary Congress on Terminal Dues System (June 7, 2019), available at: http://news.upu.int/no_cache/nd/upu-member-countries-vote-to-hold-geneva-extraordinary-congress-on-terminal-dues-system/.

¹² Formal invitation to the Third UPU Extraordinary Congress in Geneva, Switzerland, and Related Information from Bishar A. Hussein, Director Gen., UPU, to UPU Member Countries, June 15, 2019, available at: http://www.upu.int/uploads/tx_sbdownloader/genevaCongressInvitationLetterEn.pdf.

¹³ Docket No. CP2019-155, Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, May 20, 2019 (May Notice).

to institute prices for Inbound Letter Post Small Packets and Bulky Letters whether the United States remains in or withdraws from the UPU. May Notice at 8.

In Order No. 5152, the Commission approved a range of self-declared prices for Inbound Letter Post Small Packets and Bulky Letters from UPU group I, II, and III countries and from group IV¹⁴ countries with mail flows that exceed a certain annual tonnage threshold.¹⁵ The Commission also approved the application of default terminal dues established in the Universal Postal Convention to mail flows from group IV countries that do not exceed the annual tonnage threshold. Order No. 5152 at 5. When approving the range of self-declared prices, the Commission directed the Postal Service to provide notice of specific per-item and per-kilogram prices at least 15 days before the effective date of those prices. *Id.* at 19.

C. Third Extraordinary Congress

In September 2019, members of the UPU held a Third Extraordinary Congress and adopted proposals to reform the current terminal dues system for Inbound Letter Post small packets and bulky letters.¹⁶ Specifically, the Third Extraordinary Congress adopted proposals that will allow the Postal Service to charge self-declared prices for Inbound Letter Post small packets and bulky letters beginning July 1, 2020. October Notice at 4. The Postal Service must provide these self-declared prices to the UPU

¹⁴ For purposes of UPU letter post remuneration, the UPU classifies its members into four country groups, which are based on a postal development indicator developed by the UPU. See Decisions of the UPU Istanbul Congress, Resolution C 7/2016, Classification of countries and territories for terminal dues and Quality of Service Fund (QSF) purposes for the 2018-2021 period, 2017, available at: http://www.upu.int/uploads/tx_sbdwloader/actsActsOfThe26ThCongressIstanbul2016En.pdf.

¹⁵ Docket No. CP2019-155, Order Approving Range of Rates for Inbound Letter Post Small Packets and Bulky Letters and Associated International Registered Mail Service, July 12, 2019, at 5 (Order No. 5152). The Postal Service applied an annual tonnage threshold of 100 tonnes. See Docket No. CP2019-155, Responses of the United States Postal Service to Questions 1-10 of Chairman's Information Request No. 1, June 7, 2019, question 3.a.

¹⁶ See Docket No. IM2019-1, Notice and Order Establishing Section 407 Proceeding, June 20, 2019, at 1 (Order No. 5127).

International Bureau by March 1, 2020. *Id.* Because of these reforms, the United States will remain a member country of the UPU. *Id.* at 4 n.11.

D. Notice of Specific Self-Declared Prices

On October 29, 2019, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices that it intends to implement on July 1, 2020 in Docket No. CP2019-155.¹⁷ The Postal Service's October Notice includes an application for non-public treatment of materials filed under seal, redacted specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters, a redacted copy of Governors' Decision No. 19-5, and a certification pursuant to 39 C.F.R. § 3015.5(c)(2). October Notice, Attachments 1-4. In addition, the Postal Service filed the proposed rates and underlying workpapers under seal. See October Notice at 3.

The Postal Service notes that the proposals adopted by the Third Extraordinary Congress necessitate a different price structure from what the Commission approved in Order No. 5152. See *id.* at 5. Specifically, the Postal Service proposes to combine self-declared prices for Inbound Letter Post Small Packets and Bulky Letters with applicable rates for Inbound Letter Post letters and flats to "formulate blended rates for low volume flows," which will be applicable to group I countries with mail flows below 50 tonnes, and to group II and III countries with mail flows between 25 and 50 tonnes. *Id.* Furthermore, it plans to charge default terminal dues for certain low volume mail flows from group II, III, and IV countries. *Id.* at 6. Additionally, the default terminal dues for group IV countries are higher than those previously approved in Order No. 5152. *Id.* The Postal Service also notes that it adjusted the prices for associated Inbound

¹⁷ October Notice at 2. The transfer of Inbound Letter Post Small Packets and Bulky Letters would be effective once competitive prices are proposed, approved, and implemented. Order No. 4980 at 19.

Competitive International Registered Mail Service to conform more closely to the Universal Postal Convention and the Convention Regulations. *Id.* at 7.

The Postal Service states that the proposed specific per-item and per-kilogram prices for Inbound Letter Post Small Packets and Bulky Letters fall within the range approved by the Commission in Order No. 5152. *Id.* at 3. The Postal Service states that prices for the Inbound Letter Post Small Packets and Bulky Letters pieces and associated Inbound Competitive International Registered Mail Service would conform to the requirements for competitive products under 39 U.S.C. 3633. *Id.* at 3, 7. The Postal Service states that the proposed prices cover attributable costs, avoid cross-subsidization, and do not impede competitive products' collective ability to cover the appropriate share of institutional costs. *Id.*

On October 30, 2019, the Commission issued an order noticing the specific per-item and per-kilogram self-declared prices and providing interested persons with an opportunity to submit comments.¹⁸ On November 5, 2019, Chairman's Information Request No. 2 was issued.¹⁹ The Postal Service filed its response to CHIR No. 2 on November 8, 2019.²⁰

The U.S. Chamber of Commerce (the Chamber), the International Mailers Advisory Group (IMAG), and the Association for Postal Commerce (PostCom) filed comments on November 6, 2019.²¹ The National Association of Manufacturers (NAM) filed comments on November 7, 2019.²²

¹⁸ Docket No. CP2019-155, Notice and Order Concerning Rates Not of General Applicability for Inbound E-Format Letter Post, October 30, 2019 (Order No. 5288).

¹⁹ Docket No. CP2019-155, Chairman's Information Request No. 2, November 5, 2019.

²⁰ Docket No. CP2019-155, Responses of the United States Postal Service Question 1-2 of Chairman's Information Request No. 2, November 8, 2019.

²¹ Docket No. CP2019-155, Comments of the U.S. Chamber of Commerce, November 6, 2019; Docket No. CP2019-155, Comments of the International Mailers Advisory Group, November 6, 2019; Docket No. CP2019-155, Comments of the Association for Postal Commerce, November 6, 2019 (Docket No. CP2019-155 PostCom Comments).

²² Docket No. CP2019-155, Comments of National Association of Manufacturers, November 7, 2019. NAM also filed a motion for late acceptance of its comments. Docket No. CP2019-155, Motion for Late Acceptance of Comments, November 7, 2019. This motion is granted.

E. Motion Concerning the Effective Date for the Transfer

On November 20, 2019, the Postal Service filed a motion in Docket No. MC2019-17 to request the transfer of Inbound Letter Post Small Packets and Bulky Letters to the Competitive product list on January 1, 2020. In the Motion, the Postal Service requests that the Commission approve the addition of Inbound Letter Post Small Packets and Bulky Letters to the Competitive product list, effective January 1, 2020. Motion at 1. The Motion identifies two sets of prices that would be in effect in Calendar Year (CY) 2020. First, terminal dues established by the Universal Postal Convention and its Regulations will apply from January 1, 2020, to June 30, 2020. See *id.* at 4. Second, for countries with mail flows that exceed applicable annual tonnage thresholds, the Postal Service proposes self-declared prices, which it intends to implement on July 1, 2020. *Id.* For countries with mail flows that do not exceed applicable annual tonnage thresholds, terminal dues established by the Universal Postal Convention and its Regulations would continue to apply after June 30, 2020. *Id.* at 3.

Given that the Motion proposes prices and implicates both of the above captioned dockets, on November 26, 2019, the Commission issued an order to provide notice of the Postal Service's Motion and provide for an opportunity for comment.²³ On December 3, 2019, the Commission issued Commission Information Request No. 1.²⁴ The Postal Service filed its response to CIR No. 1 on December 6, 2019.²⁵

²³ Notice and Order of Proposed Revised Transfer Date and Price Adjustment for Inbound Letter Post Small Packets and Bulky Letters, November 26, 2019 (Order No. 5323).

²⁴ Commission Information Request No. 1, December 3, 2019.

²⁵ Responses of the United States Postal Service Question 1-2 of Commission Information Request No. 1, December 6, 2019.

The Public Representative filed comments on December 10, 2019.²⁶ No other participant commented on whether the proposed prices comply with 39 U.S.C. § 3633 or 39 C.F.R. part 3015.²⁷

IV. PRICES FOR INBOUND LETTER POST SMALL PACKETS AND BULKY LETTERS

Postal Service's position. As discussed above, the Postal Service proposes two sets of prices that would be in effect in CY 2020. First, terminal dues established by the Universal Postal Convention and its Regulations will apply from January 1, 2020, to June 30, 2020. See Motion at 6. Second, for countries with mail flows that exceed applicable annual tonnage thresholds, the Postal Service proposes self-declared prices, which it intends to implement on July 1, 2020. *Id.* For countries with mail flows that do not exceed applicable annual tonnage thresholds, terminal dues established by the Universal Postal Convention and its Regulations would continue to apply after June 30, 2020. *Id.* at 3. The Postal Service's Motion includes redacted financial workpapers supporting these proposed prices and a certification pursuant to 39 C.F.R. § 3015.5(c)(2). *Id.* at 1; *id.* Attachment 2.

The Postal Service states that prices for the Inbound Letter Post Small Packets and Bulky Letters pieces and the associated Inbound Competitive International Registered Mail service would conform to the requirements for competitive products under 39 U.S.C. § 3633. Motion at 6-8. The Postal Service states that, for a 12-month forward-looking period, the revenue generated by the proposed prices for CY 2020

²⁶ Public Representative Comments, December 10, 2019 (PR Comments).

²⁷ PostCom states that it did not provide any comments on the self-declared rates because the Postal Service filed the self-declared rates under seal. Docket No. CP2019-155, PostCom Comments at 1. However, PostCom is aware that the Commission's regulations permit participants to request access to information filed under seal. See Docket No. RM2019-14, Motion of the Association for Postal Commerce for Access to Nonpublic Materials, October 7, 2019; Docket No. RM2019-6, Motion of Association for Postal Commerce for Access to Nonpublic Materials, July 10, 2019; Docket No. ACR2018, Motion of Association for Postal Commerce for Access to Nonpublic Materials, January 10, 2019. Participants were not prevented from commenting on the proposed prices.

cover attributable costs of Inbound Letter Post Small Packets and Bulky Letters, avoid cross-subsidization, and do not impede competitive products' collective ability to cover the appropriate share of institutional costs.²⁸ The Postal Service asserts that the Commission should evaluate compliance based on the 12-month period following the transfer, which includes both the CY 2020 terminal dues that go into effect on January 1, 2020, and the self-declared prices that the Postal Service intends to implement on July 1, 2020. Motion at 7.

Comments. The Public Representative concludes that the UPU terminal dues that will go into effect on January 1, 2020, would not provide sufficient revenue to cover costs attributed to Inbound Letter Post Small Packets and Bulky Letters. PR Comments at 2. She claims that the Commission previously rejected the Postal Service's approach to determine compliance based on revenue generated during the 12-month period following the transfer. *Id.* She notes that the Commission previously held that "the [Postal Accountability and Enhancement Act of 2006 (PAEA)] requires each competitive product to cover its attributable costs at the time of the transfer."²⁹ She concludes that because the terminal dues scheduled to go into effect on January 1, 2020 fail to comply with 39 U.S.C. § 3633(a), the transfer should not be allowed to become effective on January 1, 2020. PR Comments at 2.

Commission analysis. The Commission has reviewed the October Notice, Motion, supporting data filed under seal, and comments. In order for the Commission to approve the proposed prices, the Postal Service must show that the proposed prices cover the product's attributable costs, do not cause market dominant products to

²⁸ *Id.* at 6. In the supporting workpapers filed with its Motion, the Postal Service included revenue earned from the Internal Air Conveyance fee collected from group IV countries with mail flows less than 100 tonnes, which were not included in the workpapers filed with its October Notice when it calculated Inbound Letter Post Small Packets and Bulky Letters. See Motion at 3-4 n.7; see also October Notice at 6 n.14.

²⁹ *Id.* citing Docket No. MC2010-36, Order Conditionally Granting Request to Transfer Commercial Standard Mail Parcels to the Competitive Product List, March 2, 2011, at 18-19 (Order No. 689).

subsidize competitive products as a whole, and contribute to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7.

As long as the revenue generated by the product exceeds its attributable cost, the proposed prices are unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the competitive product covers its attributable costs, the proposed prices are likely to comply with 39 U.S.C. § 3633(a).

The Postal Service asserts that if the Commission considers the revenue generated by the Inbound Letter Post Small Packets and Bulky Letters product over the next 12-month period, which includes the January 1, 2020 terminal dues and the July 1, 2020 self-declared rates, then the product would satisfy the requirements of 39 U.S.C. § 3633(a). Motion at 6. However, the Public Representative states that the Commission has previously rejected such an approach and that the product's prices at the time of the transfer must satisfy the requirements of 39 U.S.C. § 3633(a) before the product can be transferred. PR Comments at 2. Specifically, the Public Representative cites Order No. 689, in which the Commission conditionally approved the transfer of Commercial Standard Mail Parcels. *Id.*

In Docket No. MC2010-36, the Postal Service requested Commission approval to transfer Commercial Standard Mail Parcels from the Market Dominant to the Competitive product list. Order No. 689 at 1. In that docket, the price for the new competitive Lightweight Parcel Select mailpieces would not enable the Parcel Select product to cover its attributable cost. *Id.* at 19. The Postal Service stated that it would propose a price increase after the transfer that would ensure that the product would cover its cost and meet the other requirements of section 3633(a).³⁰ However, the Postal Service did not include new prices for Lightweight Parcel Select or for other

³⁰ Docket No. MC2010-36, Responses of the United States Postal Service to Questions 1-2, 5-11 of Commission's Information Request No. 1, December 15, 2010, Attachment A at 2 (Docket No. MC2010-36 Response to CIR No. 1).

components of the Parcel Select product with its transfer request. See Docket No. MC2010-36 Response to CIR No. 1, Attachment A at 2. The Postal Service argued that the Commission should reserve consideration of whether the Parcel Select product, with the new price category of Lightweight Parcel Select, complies with section 3633 until the annual compliance review proceeding. *Id.* In Order No. 689, the Commission found that the PAEA requires that each competitive product cover its attributable costs at the time of transfer and conditioned its approval of the requested transfer upon the notice, approval, and implementation of prices that satisfy 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015. Order No. 689 at 19.

In the instant request, unlike the request before the Commission in Docket No. MC2010-36, the Postal Service proposes two sets of prices for the Inbound Letter Post Small Packets and Bulky Letters product, which address what the product's prices will be for the 12-month period following the transfer. As described above, UPU terminal dues for small packets and bulky letters, would be in effect from January 1, 2020 to June 30, 2020, and self-declared rates would be in effect for certain high-volume countries beginning July 1, 2020. Motion at 6.

When the Postal Service proposes a new competitive product, the Commission generally looks at the proposed prices over a 12-month period, even if more than one pricing structure is in effect during those 12 months. Recently, the Commission reviewed compliance for negotiated service agreements (NSAs) that contain two distinct pricing structures based on the total revenue generated under both sets of prices over a 12-month period. For example, in Docket No. CP2019-224, the Commission reviewed an NSA where the customer agreed to pay both list prices and discounts from competitive product list prices during the first year of the contract.³¹ When the Commission reviewed this NSA for compliance with 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7, it considered the total revenue generated for the first 12 months of the NSA

³¹ See Docket No. CP2019-224, USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 66 to Competitive Product List and Notice of Filing Materials Under Seal, September 17, 2019, Attachment B at 4, 8.

under both pricing structures.³² Similarly, here, where the Postal Service proposes two distinct pricing structures, the Commission calculates the total revenue generated for a 12-month period following implementation by totaling the revenue generated by both pricing structures.

Furthermore, there are differences between the standards that apply to Competitive products and those that apply to Market Dominant products that permit the Commission to consider two distinct sets of proposed prices in a single competitive price proceeding. In Docket No. R2020-1, the Commission remanded the Postal Service's proposed price adjustments for First-Class Mail.³³ In that docket, the Postal Service adjusted its billing determinants for Inbound Letter Post to reflect the deletion of small packets and bulky letters from the Market Dominant Inbound Letter Post product list following the Postal Service's implementation of self-declared rates on July 1, 2020. See Order No. 5302 at 14-15. The Commission concluded that the workpapers did not reflect the January 2020 First-Class Mail price changes. *Id.* at 18. Rather, the workpapers contained an adjustment to the calculation of price cap impact from the January 1, 2020 price change using the expected July 1, 2020 transfer of Inbound Letter Post small packets and bulky letters. *Id.* Because "the percentage increase in price calculation is not intended to forecast a product's potential revenue for the next 12 months, but rather [is intended] to calculate the percentage increase of the prices on the day the prices go into effect[.]" the Commission concluded that the Postal Service's proposed adjustment was improper. *Id.* at 19.

Unlike Market Dominant products, which are governed by the price cap that requires the calculation of the percentage change in price, different standards apply to Competitive products. The PAEA requires each Competitive product to cover its

³² See Docket Nos. MC2019-201 and CP2019-224, Order Adding Priority Mail Express, Priority Mail & First-Class Package Service Contract 66 to the Competitive Product List, September 27, 2019, at 5 (Order No. 5256).

³³ Docket No. R2020-1. Order Remanding Price Adjustments for First-Class Mail, November 13, 2019 (Order No. 5302).

attributable costs, not cause market dominant products to subsidize competitive products as a whole, and contribute to the Postal Service's institutional costs. 39 U.S.C. § 3633(a). When a competitive price is requested, the Commission evaluates potential compliance with these requirements using a forward-looking calculation of revenue, not a percentage change in price. Thus, unlike in Docket No. R2020-1, Competitive product workpapers can reflect revenues from two distinct pricing structures over a future 12-month period.

According to the workpapers filed by the Postal Service, the total projected revenue for Inbound Letter Post Small Packets and Bulky Letters earned from terminal dues and self-declared rates in the 12-month period of CY 2020 exceeds the total projected attributable costs for Inbound Letter Post Small Packets and Bulky Letters. The Commission finds that the proposed prices should generate sufficient revenue to cover the costs attributed to the Inbound Letter Post Small Packets and Bulky Letters product and Competitive International Registered Mail service. The Commission, therefore, concludes that the new competitive prices comply with 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015.

V. CONDITIONS FOR TRANSFER

In Order No. 4980, the Commission detailed the conditions that must be met before the Postal Service could add Inbound Letter Post Small Packets and Bulky Letters to the Competitive product list and Inbound Competitive International Registered Mail service to the Competitive International Registered Mail product. Order No. 4980 at 19. First, the Postal Service must propose specific prices for the Inbound Letter Post Small Packets and Bulky Letters product and associated inbound registered mail services. *Id.* Such proposal must contain sufficient justification that the proposed prices will satisfy 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015. *Id.* Second, the Commission must conclude that the proposed prices satisfy 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015. *Id.* Third, the transfer becomes effective when the Postal Service implements the Commission-approved prices. *Id.*

The Postal Service proposes two sets of prices for the Inbound Letter Post Small Packets and Bulky Letters product. Motion at 6. With these prices, the Postal Service provides the required workpapers and supporting statements to demonstrate that the proposed prices comply with 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015. In addition, the Postal Service previously proposed a price for the Inbound Competitive International Registered Mail service. See Motion at 8; May Notice at 11. Thus, the Postal Service has satisfied the first condition required in Order No. 4980.

As discussed above, because the total revenue generated over the next 12 months by the proposed prices is projected to exceed the costs attributed to the Inbound Letter Post Small Packets and Bulky Letters product and Competitive International Registered Mail service, the Commission concludes that the prices comply with 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015. Accordingly, the second condition outlined in Order No. 4980 is met.

Once the proposed prices go into effect, the third condition will be met. Therefore, the Commission concludes that once increased terminal dues become effective on January 1, 2020, the Inbound Letter Post Small Packets and Bulky Letters product and the Inbound Competitive International Registered Mail service will be added to the Competitive product list. To effectuate this classification change, the revisions to the Mail Classification Schedule that the Commission conditionally approved in Order No. 4980 will be effective upon the implementation of the approved prices.

VI. APPLICATION FOR NON-PUBLIC TREATMENT FOR SELF-DECLARED RATES

The Postal Service filed specific per-item and per-kilogram self-declared prices with its October Notice. See October Notice at 2. The Postal Service also filed these specific per-item and per-kilogram self-declared prices with its Motion. Motion at 4-5. The Postal Service filed these self-declared rates under seal and requests that the Commission afford these self-declared prices non-public treatment. October Notice, Attachment 1; Motion Attachment 1.

The Chamber, IMAG, PostCom, and NAM oppose the Postal Service's application for non-public treatment for these self-declared prices. These commenters raise two concerns. First, PostCom and the Chamber state that there is a public interest in unsealing these self-declared prices because market dominant products have been subsidizing Inbound Letter Post for years and, because these prices are only available to designated operators, there is potential for price discrimination.³⁴ Second, the Chamber, IMAG, PostCom, and NAM state that unsealing the self-declared prices will not result in commercial harm.³⁵ Specifically, because the UPU International Bureau will publish self-declared rates, PostCom asserts that "there is no justification for keeping these rates non-public after March 1, 2020," when designated operators provide their self-declared rates to the UPU. PostCom Comments at 2.

In CIR No. 1, the Commission asked the Postal Service whether it would consent to unsealing self-declared rates after the March 1, 2020, deadline for designated operators to file self-declared rates with the UPU. CIR No. 1, question 1. The Postal Service responds that it does not consent to unsealing the self-declared rates after March 1, 2020. Response to CIR No. 1, question 1. The Postal Service notes that its concerns do not expire on March 1, 2020, and that if the Commission were to unseal the self-declared prices over the Postal Service's objections, the prices should not be unsealed until after the UPU publishes the final prices. *Id.*

The Commission will address the arguments raised in the Postal Service's applications for non-public treatment, comments, and the Postal Service's response to CIR No. 1 in a future order.

³⁴ PostCom Comments at 3; Chamber Comments at 2.

³⁵ Chamber Comments at 2-3; IMAG Comments at 2-3; PostCom Comments at 2-3; NAM Comments at 1.

VII. ORDERING PARAGRAPHS

It is ordered:

1. The Commission concludes that the prices proposed in the Motion of the United States Postal Service to Effectuate Transfer on January 1, 2020, and Application for Non-Public Treatment, filed November 20, 2019, comply with 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015.
2. The proposed prices may take effect as scheduled.
3. The conditions imposed by Order No. 4980 on the transfer of Inbound Letter Post small packets and bulky letters and associated international registered mail service will be met once the proposed prices become effective.
4. The revisions to the draft Mail Classification Schedule presented in Order No. 4980 will be effective upon the implementation of new prices.

By the Commission.

Ruth Ann Abrams
Acting Secretary